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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BIXBY HILL COMMUNITY ASSOCIATION, INC., Plaintiff and Respondent, v. RANCHO LOS ALAMITOS FOUNDATION, Defendant and Appellant.	B156650 (Super. Ct. No. BC 258460)

APPEAL from an order of the Superior Court of Los Angeles County. Malcolm H. Mackey, Judge. Reversed.

Gibson, Dunn & Crutcher, Jeffrey D. Dintzer and Michael J. Hartley for Defendant and Appellant.

Hamburg, Hanover, Edwards & Martin, Gregg A. Martin and David M. Almaraz for Plaintiff and Respondent.

Defendant moved to strike two causes of action in plaintiff's complaint under the anti-SLAPP (strategic lawsuit against public participation) statute (Code Civ. Proc., § 425.16).[1] The disputed causes of action alleged that defendant had intentionally and negligently interfered with plaintiff's economic and contractual relationships with plaintiff's members and security guard service. The trial court denied the motion, finding defendant had failed to show the disputed causes of action fall within the provisions of section 425.16. We reverse the order denying the motion to strike.

BACKGROUND

This litigation involves a Long Beach historical site called Rancho Los Alamitos that belonged to the John W. Bixby family since 1878. In 1965, the Bixby Trustees sold a large portion of the Rancho property to developers. The sold acreage consisted of the undeveloped land surrounding the Rancho buildings and gardens. The developers intended to build a gated residential community (commonly called the Bixby Hill subdivision), comprised of two tracts with privately owned streets. To avoid leaving the Rancho buildings and gardens land-locked, the developers were required to provide public access to the historical site at two locations to be fixed at the close of escrow. In 1967, the Bixby Trustees transferred the Rancho buildings and gardens by a Deed in Trust to the defendant City of Long Beach. The Deed in Trust required the city to use the historical site for "community and/or public cultural, educational, social and civic meetings and gatherings."

A. The Declaration of Restrictions

Plaintiff and respondent Bixby Hill Community Association, Inc., is the homeowners association that owns and controls the private streets surrounding the Rancho buildings and gardens held in trust by the city. Pursuant to the 1965 sales agreement by which the developers acquired the undeveloped Rancho property, the developers in 1966 recorded a Declaration of Restrictions requiring the Association to

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[1] All further statutory references are to the Code of Civil Procedure.

"'provide the use of the streets located within the two tracts for the public to be able to drive and/or walk to the Bixby Memorial area.'" All of the homes in the Bixby Hill subdivision were sold subject to the previously recorded Declaration of Restrictions.

B. The Deed in Trust

The 1967 Deed in Trust requires the city to preserve, maintain, and operate the historical site according to the terms of the Deed in Trust. The Bixby Trustees retained the right of reentry to terminate the city's interest and retake possession as the site's owner if the city, after 30 days' written notice, fails to perform any of the covenants in the Deed in Trust. The trustees' right of reentry will expire after 50 years from the date of the Deed in Trust, absent the city's default. Upon expiration of the right of reentry, the city will become "the owner of the property described in Exhibit '1' free of the Condition Subsequent provided in" the Deed in Trust.

C. Contemplated Development

The Deed in Trust expressly contemplated the eventual construction of a new community center on the historical site. The Deed in Trust specified that although "no charge shall be made for admission to the Historical Site or to its main house, outbuildings or gardens," the "City may impose such fees or charges as it shall determine for use of the community center building which the City may be required to construct under certain conditions pursuant to the Agreement."

In 1968, the city and the trustees approved the "Rancho Los Alamitos Historical Site Agreement." (Some caps. omitted.) The site agreement described the parties' intent to restore, repair, and landscape the site to preserve it as a living historical monument for the community's benefit. Like the Deed in Trust, the site agreement expressly contemplated the city's construction of a new community center on the site.

D. The Easement Grant Deed

In 1968, the Association recorded an Easement Grant Deed giving the city an easement, "for ingress and egress including, without limitation, ingress and egress of

members of the public, police, fire and other public protection, service and maintenance personnel and equipment, to and from" the historical site. The easement "extend[s] upon, over, along and across those certain portions of the private streets and roadways known as Palo Verde Avenue and Bixby Hill Road, and the sidewalks and walkways appurtenant thereto . . . ." The easement "is subject to the following limitations: [¶] (1) This easement is nonexclusive and the rights granted herein are to be used in common with Grantor and with others; [¶] (2) Ingress and egress by members of the public pursuant to this easement is limited to those hours when the Site shall be open to the public as determined from time to time by the City; ingress and egress by police, fire and other public protection, service and maintenance personnel and equipment shall not be limited." The purpose of the easement is "to make possible access to the Site in accordance with the intent and purpose of the Deed in Trust . . . and this easement shall be construed in furtherance of such intent and purpose."

All visitors to the historical site must pass through the security gate at the subdivision's entrance on Palo Verde Avenue. The Association employs a private security guard service to staff the security gate 24 hours a day, 7 days a week.

E. The Prior Litigation

At some point, the city leased the historical site to the Assistance League of Long Beach, Inc., a charitable organization. During the term of that lease, the Association opposed the city's revised plan for building a community center on the site. The Association feared the enlarged facility contemplated by the revised plan would promote a greater use of the site, thereby overburdening the easement.

The city filed a declaratory relief action against the Association (*City of Long Beach v. Bixby Hill Community Association, Inc.* (Super. Ct. L.A. County, 1972, No. SO C 23982), in which the Association filed a cross-complaint against the city. The Association's cross-complaint, which framed the issues addressed in the trial court's statement of decision, sought to: (1) cancel and annul the easement grant deed, (2) enjoin the construction of "a community building having in excess of 2600 square feet of floor

area or equipped with a kitchen in excess of the modest size usually found in private homes; [enjoin the use of] the historical site for any private or commercial purposes whatsoever; [enjoin the use of] the historical site at any time other than during the hours between 10:00 a.m. and 4:00 p.m. or between those hours unless the site is open to the public, and [prohibit the Assistance League] from otherwise departing from or violating the uses and purposes for which the easements were granted"; and (3) invalidate the Assistance League's lease.

The trial court (the Hon. Roy J. Brown) issued a 16-page Memorandum of Decision that upheld the city's easement, the Assistance League's lease, and the revised plan for the proposed community center. With limited exceptions, the trial court found the Assistance League's planned uses of the site would neither contravene the uses authorized by the Deed in Trust nor overburden the easement. The court found that although the revised plan called for an enlarged community center, the revision was duly adopted and approved as required by the historical site agreement and "does not offend any use limitation imposed as a term of the dedication. At least it does not do so if the building as enlarged will reasonably serve the purposes for which the dedication was made in the first instance."

The trial court ordered the Assistance League's use of the site to be limited to those purposes sanctioned by the Deed in Trust. The court stated that the Assistance League "should be restrained and enjoined from using the historical site for any purpose which is not authorized either expressly or by necessary implication by the language of the deed in trust or which is not incidental to any such authorized use. The proscription should be broad enough to forbid the League's use of the premises for charitable work unless the particular work constitutes an activity which the deed in trust authorizes, and it should also forbid the use of the premises as the general corporate offices of the League. However, the use of the premise for office purposes as necessary or convenient for the proper conduct of the League's authorized activities at the historical site should not be within the prohibition. [¶] Except for the uses or activities which should be enjoined as

stated above, the evidence does not disclose that any activity is proposed by the League which would either contravene the uses of the historical site authorized to be made by the deed in trust or would cause the public's use of the private streets to exceed in scope the privileges in the easement."

F. The Foundation Agreements

In 1984, the city relinquished the operation of the historical site to defendant Rancho Los Alamitos Foundation, a California non-profit corporation. The Foundation was formed, pursuant to the Foundation Agreement, "specifically for the purpose of managing, operating, and interpreting the Historical Site[.]" The present complaint alleges that the Foundation is "controlled by the Bixby Trust."

In 1985, the city and the surviving Bixby Trustee modified the 1967 Deed in Trust and 1968 historical site agreement "to provide for a broader scope of use for the Historical Site, together with the right to impose fees or charges for the use thereof[.]" The 1985 amendments, which shall only remain in effect while the Foundation Agreement is in effect, specifically allow the Foundation to use the site "for events open to the public, for private use thereof by other persons or entities, and for its own fund-raising activities." The 1985 amendments also allow the Foundation, with the city's approval, to "set and impose fees or charges for general public admission to the Historical Site, for events open to the public and for private use thereof by other persons or entities. [¶] . . . The Foundation may, in its sole discretion, set and impose fees or charges to or contributions from attendees at or invitees to its own fund-raising activities at the Historical Site. [¶] . . . The Foundation may sell or serve, in the exercise of its sole discretion, alcoholic beverages for consumption at the Historical Site."

Also in 1985, the city and the Foundation executed a management agreement requiring the Foundation to prepare a master plan for the site. Accordingly, the Foundation prepared a master plan, which the city council approved in 1989.

In 1995, the city and the Foundation entered into a lease agreement whereby the Foundation has leased the historical site from the city for a 25-year term.

G. The Restoration Plan

A major component of the Foundation's master plan is the "Barns Area Restoration and Education Center Plan." The restoration plan entails "restoring the barns area to more closely reflect the historic character of the Ranch and constructing an education center." The plan allegedly includes the "creation of an 11,502 square feet 'community building' through the substantial expansion of an existing historic . . . barn[,]" the addition of two new buildings (including a bookstore), and "the removal, reduction and/or alteration in size of some of [the] existing structures or gardens."

For over two years, the Foundation and the Association negotiated a Memorandum of Understanding (MOU) in an effort to address the Association's concerns about the restoration plan's impact on the Bixby Hill subdivision. While the MOU negotiations were underway, the Association sent several mailings to its members describing the progress of the negotiations.

After the MOU was drafted, the Association's board rejected the MOU by a four to three vote. The board's rejection of the MOU was controversial within the Association. After the board rejected the MOU, the three Association directors who had voted for the MOU resigned from their board positions. One of them, Leonard Simon, joined with other Bixby Hill residents to oppose the use of Association funds to file the present lawsuit. The opposition group, the Committee for Peaceful Reconciliation (CPR), has retained an attorney. The CPR obtained the signatures of a majority of the homeowners (170 residents representing "132 homes out of a total of 259 homes within Bixby Hill") on "a petition stating that we are opposed to any action by the [Association] Board that will lead to litigation and lead to the use of [Association] funds to support litigation."

During the MOU negotiations, public hearings were held on the Foundation's Environmental Impact Report (EIR) for the restoration plan. Several Association members appeared at those hearings to voice their objections. The city planning

commission and the city council approved the EIR in January and March 2001, respectively.

H. Alleged Interference With Security Guard Service

After the EIR was approved, access to the historical site became a subject of growing dispute. The Association contended the historical site was only open to the public between 1 p.m. to 5 p.m. on Wednesday through Sunday, when docents are available to lead tours without advance reservations. Consistent with that view, the Association began restricting access to the site at all other times. The Foundation, however, contended that visitors should be granted access to the site to attend functions held at other times. A local newspaper reported on the access dispute as follows: "At that hearing, [Association] board President Trudy Polsky said that she would fight the council decision [to approve the EIR] 'by any means legally available.' This summer, the security guard at the gated entrance began turning away tours and individuals attempting to visit the rancho outside of the posted 'public' hours, and sent letters to rancho staff requiring lists of any visitors or events scheduled outside of those hours. [¶] At least one special event was rescheduled and several educational tours canceled because of the [Association's] actions, according to rancho staff. The standoff prompted [Councilman Frank] Colonna to ask the entire City Council to 'reaffirm' the rancho's hours of operation, which it did at its July 31 meeting."

The city council's resolution of July 31, 2001, declared that the Rancho's public hours were 7:30 a.m. to 10:30 p.m., seven days a week.[2] The Foundation's executive

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[2] For many years, the historical site has been open to the public for docent-led tours, with no reservations required, on Wednesday through Sunday, from 1 to 5 p.m. Visitors arriving during those hours would stop at the guardhouse and receive "a dashboard flier (which the Rancho provides and pays for) and [have] the vehicle license plate number . . . noted. [At all other times,] [v]isitors arriving for scheduled meetings and activities [customarily gained access] because of prior notification to the guardhouse by the Foundation." According to the declaration of Foundation executive director Pamela Seager, the Foundation staff routinely informed the guardhouse staff of special events, activities, meetings, or classes being held at the site, and the names (if known) and number of persons expected to attend. Each month, Seager gave the guards and an Association board member a copy (and subsequent revisions) of the "Site Use and School Tour calendar." That information allowed the guards to permit entry without having to telephone the Rancho to inquire about each visitor.

director, Pamela Seager, attested that when large events are held at the site, the Foundation provides shuttle buses, off-site parking, and an additional security guard at the guardhouse to lessen the impact on the Bixby Hill development.

Seager described the conflict with the Association regarding access hours as follows. "On July 11, 2001, I received a letter dated July 1, 2001 from Mr. Gary Frahm, the Board's representative responsible for security, asking that I reschedule a 10:00 a.m. Young Adventures Summer Camp Program and two other children's programs scheduled at 10:00 a.m. to between the hours of 1:00 p.m. to 5:00 p.m. Mr. Frahm stated that since it was summer, these events did not appear to be school activities. As a result of Mr. Frahm's letter, I was unable to guarantee any of the children's groups that they would be allowed access to the Rancho at 10:00 a.m. Without such a guarantee, the schools chose to cancel their visits to the Rancho. [¶] . . I provided the [Association's security guards with the] customary Site Use Calendar for August 2001, which noted that the Rancho would be hosting a luncheon, presentation and tour for Leadership Long Beach at noon on Monday, August 27. On July 25, 2001, Mr. Gary Frahm sent me a letter on behalf of the Board requesting that the activity be rescheduled into what the [Association] Board considered public access times, Wednesday through Sunday, 1:00 p.m. to 5:00 p.m. Since the City Council had passed a resolution on July 31 restating that the Rancho's hours were 7:30 a.m. to 10:30 p.m. seven days a week, the Leadership Long Beach event was not rescheduled. At 11:15 a.m. on August 27, I called to the guard gate to say that a bus and four cars would arrive around 11:30 a.m. I was informed by the guard that the guests would not be permitted entry until 1 p.m. A former member of Leadership Long Beach and a Bixby Hill resident [Leonard Simon] stood willing to welcome the group as his guests and was, indeed, scheduled to address the group. He contacted the guardhouse immediately and was told that access had not been denied. At 11:40 a.m. the guard called back and indicated that the group would be permitted access. The two telephone conversations with the guard lasted no longer than four minutes. At no time did I tell the guard he was not to follow instructions from his employer or the [Association]."

I. Alleged Interference with Association Members

As a result of the dispute over access, Foundation chairman Preston B. Hotchkis sent a letter dated August 9, 2001, directly to each Association member. The letter advised the Association members of their board's refusal to honor the daily public access hours, as adopted by the city council, of 7:30 a.m. to 10:30 p.m. The Foundation's letter stated that the Association board, by instructing its guards to deny "access to the public (other than school tours) at all" times other than 1 to 5 p.m., Wednesday through Sunday, was "setting the Association up for litigation with the City and the Rancho." Such litigation, the letter warned, may not be covered by the Association's insurance policy. The letter informed the Association members that the Foundation had obtained a "prescriptive easement to the gate on the south side of the property at Rancho Drive." The letter stated that if the "Board persists [in limiting access], it may be necessary to explore harsher remedies such as condemnation of your private road or the guard gate."

J. The Present Litigation

The Association filed the present suit against the city and Foundation in September 2001. The complaint alleged the Foundation's restoration plan would bring increased traffic, noise, development, and expense to the development.

The Association's first three causes of action for declaratory relief, apportionment of maintenance and repair expenses (Civ. Code, § 845), and injunctive relief are not before us on this appeal.[3] This appeal concerns only the fourth cause of action for intentional interference, and the fifth cause of action for negligent interference, with contractual and economic relationships.

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[3] The declaratory relief claim seeks, among other things, to invalidate the 1985 modifications to the Deed in Trust and historical site agreement (the modifications which permitted the Foundation to use the site's for fundraising activities, charge admission, and sell alcoholic beverages for consumption on the site), and the city council resolution declaring the site open to the public from 7:30 a.m. to 10:30 p.m. daily. The second cause of action seeks the city's pro rata share of maintenance and repair costs associated with the easement. The third cause of action seeks to enjoin the defendants from, among other things, using the site in any manner not authorized by the 1967 Deed in Trust and 1968 historical site agreement, expanding the public hours beyond Wednesday-Sunday from 1-5 p.m., and using the site for any private or commercial purposes.

The interference causes of action alleged the city and Foundation had negligently and intentionally interfered with the Association's economic and contractual relationships with its security guard service and members. The Foundation allegedly interfered with the security guards by seeking access for visitors during (what the Association claims were) nonpublic hours. Defendants allegedly "disrupted, interfered with and hindered the Plaintiff's receipt of the benefits of the security guard service it has retained since Defendants have continually communicated false and misleading information regarding their access rights to the Development thereby leading to confusion and misunderstanding. Defendants have done so in an attempt to utilize the Plaintiff's private property during non-Public Hours thereby causing Plaintiff and security service to repeatedly confer and clarify admission to the Development and the monitoring of such activities."

The Foundation allegedly interfered with the Association's members by mailing the August 9, 2001, letter to each member. The complaint alleged "the Defendants have embarked upon an effort to disrupt the Plaintiff's relationship with its members by contacting them directly and asserting that Plaintiff's Board of Directors has acted in a manner detrimental to their interests and the interests of the Development. The Defendants have communicated with and threatened, through correspondence and otherwise, that Plaintiff's members will suffer individual liability and loss of property should Plaintiff continue to pursue its rights and obligations. Such communications are specious, unwarranted, improper and without privilege. Such communications have all been made in an effort to disrupt the Plaintiff's relationship with its members and hinder the Plaintiff's efforts to enforce its rights and perform its obligations."

Under both interference causes of action, the Association seeks actual damages as well as punitive damages according to proof.

K. The Special Motion to Strike

The Foundation, joined by the city, moved to strike the two interference claims under the anti-SLAPP statute, section 425.16. In opposition to the motion, the

Association contended in part: (1) the anti-SLAPP statute does not apply to a claim of interference with contractual relationships; (2) the anti-SLAPP statute does not apply to private speech in a nonpublic forum; (3) the facts fail to show the acts underlying the interference claims were acts in furtherance of the right of petition or free speech; (4) the interference claims seek to protect the Association's property rights and do not concern free speech rights; (5) the Association may enforce its rights under the easement; (6) a suit that seeks to stop illegal conduct is not a SLAPP suit; and (7) the facts show the Association is likely to prevail on the merits of their interference claims.

The Association contended it was impossible to separate the interference claims from the declaratory and injunctive relief claims, because they all arise out of the same underlying facts. Association President Trudy Polsky's declaration stated in part: "The [Association's] interference claim arises directly out of the dispute over the Easement, the Deed in Trust, the Amended Deed, etc. The [Association] has always owned and controlled the guard gate, and believes that it has the right to control admission procedures to the Development. The Foundation's efforts to countermand and evade these procedures ha[ve] interfered with the [Association's] relationship with its guards and ha[ve] disrupted the Board's ability to render its services to its members. The Defendants should be made to stop such conduct and the interference claim was strictly intended for that purpose. The [Association] has no desire or interest in chilling the Defendants' free speech rights on any topic they deem fit. The [Association] does not believe that such rights extend to interfering with the [Association's] lawful rights to govern the Development."

Association Board member Rose Marie Alex submitted a declaration stating, in part, that the Foundation's interference with the security guards (by instructing the guards to admit visitors through the gate during what the Association claims were nonpublic hours) had caused the Association to incur "substantial time and money combating the Foundation's interference with the Board's instructions [to the security guards]. For example, the Foundation's contradictory instructions to the guards required the Board to

draft written instructions to the guards regarding admittance to the Rancho. The [Association] incurred attorney's fees to insure that the instructions complied with the terms of the easement grant deed and other documents. Absent the Foundation's actions, we would not have been required to spend the time or money preparing the written instructions."

Regarding damages caused by the Foundation's alleged interference, Alex's declaration stated that "a small, but vocal, minority of the [Association's] members have expressed opposition to the [Association's] actions thus far and have indicated they will not support any assessment that the [Association] may impose." In addition, the Association "has been advised that our security costs will increase because the security guards have been required to spend more time dealing with the Foundation and the contradictory instructions it has given to the security guards over access in accordance with the easement grant deed." Finally, Alex stated that the Association has incurred increased attorney fees, management company costs, and mailing costs for newsletters that were sent to the members as a result of the Foundation's interference.

Security guard Anthony Mendoza's declaration also addressed the issue of damages. Mendoza stated the Foundation's "contradictory instructions" to admit select members of the public to the Rancho "outside the public hours" had created confusion about the admission policy and "who controlled the gate." "The Foundation's activities and contradictory instructions have required me to interact more frequently with the Plaintiff's Board and the Director of Security, Gary Frahm, about admission procedures and the Foundation's attempts to control the gate." "I have spent time with various Board members clarifying the meaning of the term 'members of the public,' the hours that the Rancho is open to the public, and the necessity of avoiding any appearance that the Plaintiff is improperly excluding or favoring any member of the public who wishes to visit the Rancho. I have attended Board meetings at the request of the Plaintiff's Board of Directors and discussed these issues with the Board. The Plaintiff is charged for my

time spent at Board meetings over and above what is charged for my time working at the security gate."

Mendoza cited two occasions where the Foundation had interfered with his job duties. One occasion was when several Foundation staff members arrived at the gate with a number of Boeing representatives in their cars "early in the morning before the Rancho was open to the public. I was already aware that the Plaintiff had not approved this access." "Because there were staff members in the car, I felt that I had to let them in since service personnel are permitted at any time." The second occasion was the Leadership Long Beach meeting that occurred on August 27, 2001. To ascertain that the Association had approved this meeting, Mendoza tried to reach Gary Frahm by phone. When that was not possible, Mendoza phoned the Foundation's executive director Seager, who said "she would 'take care of it' and hung up the phone. [¶] . . . Following my conversation with Ms. Seager, I spoke to the Plaintiff's President, Trudy Polsky. Ms. Polsky instructed me to allow the Foundation's visitors in . . . . However, before I was able to call Ms. Seager back, one of the residents in the development, Len Simon, appeared at the security gate and told me that the group Ms. Seager had referred to were his guests, and he stated 'You will let them in, won't you.' I advised Mr. Simon that I had already obtained the Plaintiff's approval to permit entry."

Attached to Mendoza's declaration was a memorandum from the Association's board addressed to Pinkerton Security. The memorandum stated in part: "Since we are a new Board of Directors, we felt that we should reiterate our entrance gate procedures to your security officers in reference to the public entering Bixby Hill. We are providing the guard station with a copy of said procedures. [¶] Kindly advise all Pinkerton employees assigned to the Bixby Hill Gate to take instructions as to procedures from the Bixby Hill Community Association Board of Directors only. [¶] Any requests or instructions from any other source including the Rancho is to be forwarded to Gary Frahm, Chairperson of our committee on security, or to any Board member for consideration, by the Board of Directors."

Gary Frahm, a resident of the Bixby Hill development who chairs the Association's security committee, also submitted a declaration regarding damages. Frahm stated there were "a few occasions where I have had to personally intervene when the RANCHO has attempted, without prior approval, to have members of the public come through the gate at hours other than Wednesday through Sunday 1 to 5 p.m. (the 'public hours[']). On those occasions, I have been required to take time to quickly obtain Board approval (where possible). These occasions have required me to spend more time dealing with admittance issues related to the Rancho and advising the [Association's] Board of Directors about the issues and problems. [¶] . . . I have also observed that the Rancho's efforts to gain entry for members of the public outside the public hours has caused a distraction to our guards in the performance of their duties. I have observed them spending more time than they would otherwise spend determining whether someone should or should not be permitted access to our private streets and the Rancho. This has interfered with the efficiency of the guard's duties relating to admitting other visitors who are waiting at the guard gate, often lined up in to the public intersection."

The trial court denied the motion to strike.[4] In denying the motion, the trial court stated the defendants "failed to meet the burden of establishing the action falls within 425.16. Though it's garnered public interest, this is not a First Amendment issue. They have some claim about interference. Whether they have damages or not, that's something they have to prove."

The Foundation appealed from the order denying the motion to strike.

DISCUSSION

A. Burden of Proof and Standard of Review

Section 425.16, subdivision (a) provides: "The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid

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4 At the same time, the trial court sustained, with leave to amend, the city's demurrer to the 2nd, 4th, and 5th causes of action. The city is not a party to this appeal.

exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly."

Section 425.16, subdivision (b)(1) provides: "A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

"The defendant has the initial burden of making a prima facie showing that the plaintiff's claims are subject to section 425.16. [Citations.] If the defendant makes that showing, the burden shifts to the plaintiff to establish a probability of prevailing, by making a prima facie showing of facts which would, if proved, support a judgment in the plaintiff's favor. [Citations.] Whether section 425.16 applies and whether the plaintiff has shown a probability of prevailing are both reviewed independently on appeal. [Citations.]" (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 999.)[5]

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5 As noted in *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 305-306, the courts almost universally have refused to require the defendant, as the moving party in a SLAPP motion, to make a prima facie showing that the plaintiff's motivation in filing the lawsuit was to chill the defendant's first amendment rights. The court in *Fox Searchlight* stated: "Thus, the only thing the defendant needs to establish to invoke the protection of the SLAPP statute is that the challenged lawsuit arose from an act on the part of the defendant in furtherance of her right of petition or free speech. From that fact the court may presume the purpose of the action was to chill the defendant's exercise of First Amendment rights. It is then up to the plaintiff to rebut the presumption by showing a reasonable probability of success on the merits." (*Id.* at p. 307.)

Whether the defendant's prima facie showing must include proof that the plaintiff's motivation in filing the lawsuit was to chill the defendant's first amendment rights is presently before the California Supreme Court. (*Equilon Enterprises, LLC v. Consumer Cause, Inc.*, review granted April 11, 2001, S094877.)

B. Whether Section 425.16 Applies

As used in section 425.16, an act in furtherance of a person's right of petition or free speech includes: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e).)

In this case, the intentional and negligent interference claims seek to punish the Foundation for oral and written statements made to security guards and Association members regarding a public issue, namely the public's right to use the easement during the hours set by the city council. According to the 1968 Grant Deed Easement, the general public's right to use the easement is limited "to those hours when the Site shall be open to the public *as determined from time to time by the City*[.]" (Italics added.) Given the city council's declaration that the site is open to the public daily from 7:30 a.m. to 10:30 p.m., we view the Foundation's statements as having been made in furtherance of the public's right to use the easement during those hours. We conclude the challenged statements are expressly covered under subdivision (e)(2) of the statute because they concerned an issue (the site's public hours and the public's right to use the easement during those hours) under the city council's continuing jurisdiction.

In addition, we conclude the Foundation's statements were also expressly covered under subdivision (e)(4) of the statute. The Foundation's letter to Association members and statements to security guards fall under the statute's broad protection for "any other conduct in furtherance of the exercise of the constitutional right . . . of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(4).)

The communications with the Association members and security guards concerning public access to the site during the hours set by the city council constituted "conduct in furtherance of the exercise of . . . the constitutional right of free speech in connection with a public issue or an issue of public interest." (*Ibid.*)

The Association contends the Foundation has no free speech rights on the Association's private property. The cases cited by the Association are distinguishable, however, because none of them involved the type of conduct at issue in this case. Here, the Foundation's challenged speech activity consisted of the letter mailed to Association members at their homes; the schedules, calendars, and lists sent to security guards at the guard booth; the phone calls made to the guard booth asking that visitors be granted access; and the visit to the guard booth made by a resident (Leonard Simon) when visitors arrived for the Leadership Long Beach event. In this case, there is no allegation of any organized picketing, protesting, soliciting, or leafleting on the Association's private property.

The Association contends that "[t]he Foundation has no First Amendment right to direct [the Association's] security guard ***on admission procedures and other matters related to the security of the development***." The Association, however, granted an easement allowing the public to use the development's private roads and walkways to visit the historical site during the hours set by the city. If we were to adopt the Association's position that the Foundation lacks a First Amendment right to speak to the guards about granting access during the hours set by the city, no one would be safe in seeking access to the site during the hours set by the city (other than 1 p.m. to 5 p.m., Wednesday through Sunday). If the Foundation's communications with the guards may be deemed acts of interference, then any citizen's request for access may also be deemed an act of interference. The Association nearly admits as much, stating: "While the Foundation is not a member of the Association, the Foundation is like any other resident seeking access to the Development or disputing the governance of the community. The Foundation is not free to flaunt the [Association's] authority in these circumstances any

more than a complete stranger having no connection to the Development could come in and insist that they should be allowed in for no reason. The [Association] would surely be permitted to sue that person for interfering with its guards and trespassing on the [Association's] property." There is no evidence in this record of a trespass or a request for entry that was made "for no reason." The record shows that all requests for entry were made on behalf of visitors seeking access to the historical site during the hours set by the city. On this record, we conclude that excluding the challenged communications from the reach of the statute would be an invalid restriction on the Foundation's free speech rights.

We reach this conclusion notwithstanding the Association's claim that its complaint is not primarily "about speech rights, but about the right to use the [Association's] property and the nature and extent of the City's rights to use the Rancho. Incident to this dispute, the Foundation has purported to direct the [Association's] security guards in a manner contrary to the [Association's] instructions. This wrongful conduct should be stopped. The [Association] is entitled to prevent the Foundation from interfering with the [Association's] relationships with its security service and activities that disrupt the [Association's] ability to govern. The [Association] will achieve this result if it prevails on its declaratory relief and/or injunctive relief claims. The Foundation cannot avoid the [Association's] potential right to recover damages from the very conduct that it might successfully prohibit."

Whether the Association is entitled to injunctive or declaratory relief is a distinct and separate issue concerning, among other things, apportionment of the expenses of maintaining the easement. The interference claims are related but only to the extent they concern the hours when access to the easement must be granted. The interference claims are not so intertwined with the injunctive and declaratory relief claims that dismissal of the interference claims would be improper. Individual causes of action may be stricken under section 425.16 even though other viable causes of action remain to be litigated. "[S]ection 425.16, subdivision (b)(1) states, 'A *cause of action* against a person . . . shall

be subject to a special motion to strike . . . .' (Italics added.) The express language of section 425.16, subdivision (b)(1) allows a single cause of action to be stricken. The fact that other claims remain does not bar a trial judge from granting a section 425.16 special motion to strike." (*Shekhter v. Financial Indemnity Co.* (2001) 89 Cal.App.4th 141, 150; accord, *Kajima Engineering & Construction, Inc. v. City of Los Angeles* (2002) 95 Cal.App.4th 921, 928 [upheld the dismissal of one cause of action under section 425.16]; cf., *ComputerXpress, Inc. v. Jackson, supra,* 93 Cal.App.4th at p. 1004 [where claims were not factually or legally intertwined, a section 425.16 special motion to strike may be granted as to some claims]; but see *M.G. v. Time Warner, Inc.* (2001) 89 Cal.App.4th 623 [in an invasion of privacy and emotional distress suit against the defendant publisher of a photograph depicting child molestation victims, the defendant's section 425.16 motion was properly denied where the plaintiff had shown a reasonable probability of success on some of the invasion of privacy claims].)

The Association contended below that because the challenged remarks were made in private (they were not made in a public place or before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law), they are not protected by section 425.16. Although section 425.16 "does not unambiguously answer whether private conversations concerning a public issue are covered[,]" (*Averill v. Superior Court* (1996) 42 Cal.App.4th 1170, 1174), we agree with *Averill* that nothing in the statute persuades us "the Legislature intended to exclude private conversations from protection under the statute . . . ." (*Id.* at p. 1175.) "Considering the stated purpose of the statute, which includes protection of not only the constitutional right to 'petition for the redress of grievances,' but the broader constitutional right of freedom of speech, we conclude the Legislature intended the statute to have broad application." (*Id.* at p. 1176.)

We conclude the Foundation has met its burden of showing that the interference claims fall within the purview of section 425.16. The question of damages (whether the Association suffered harm to its economic and contractual relationships as a result of the Foundation's alleged interference) does not enter into this determination. The question of

damages is relevant to our determination of the second issue, whether the Association has established a probability of success. (See *Averill v. Superior Court, supra*, 42 Cal.App.4th at p. 1176 [slander cause of action was stricken after the appellate court determined the challenged statements were covered by the anti-SLAPP statute and there was no probability of success given the lack of any damages resulting from the allegedly slanderous statements].)

C. The Association's Probability of Success

"To show a probability of prevailing for purposes of section 425.16, a plaintiff must '"'make a prima facie showing of facts which would, if proved at trial, support a judgment in plaintiff's favor.'"' [Citation.] This standard is 'similar to the standard used in determining motions for nonsuit, directed verdict, or summary judgment,' in that the court cannot weigh the evidence. [Citations.] However, the plaintiff 'cannot simply rely on the allegations in the complaint' [citation], but 'must provide the court with sufficient *evidence* to permit the court to determine whether "there is a probability that the plaintiff will prevail on the claim."' [Citation.]" (*ComputerXpress, Inc. v. Jackson, supra,* 93 Cal.App.4th at p. 1010.)

The Foundation contends the Association cannot prevail on the interference claims because the Association has failed to present a prima facie case, and has failed to present any evidence of damages.

The Association's theory is that the Foundation has negligently and/or intentionally interfered with the Association's contractual relationships with its members and security service, making it more difficult for the Association to obtain the benefits of its bargains. The Association contends: "As set forth in the Declarations of Rose Marie Alex, Gary Frahm and Anthony Mendoza, [the Association] has been damaged by the Foundation's conduct in that it has become more expensive and burdensome for [the Association] to receive the benefits of its contract with the security guard in that both the security service and [Association] board members have had to spend enormous amounts of time communicating with each other regarding the Foundation's interference. . . ."

The record indicates that after the EIR was approved, the Association board attempted to exercise greater control over access to the historical site during hours other than Wednesday through Sunday from 1 p.m. to 5 p.m. The record fails, as a matter of law, to support the Association's contention that the increased expenses associated with its increased efforts to control the gate at all other times were the result of any unlawful interference by the Foundation. Given that the city council has declared the public hours to be from 7:30 a.m. to 10:30 p.m., seven days a week, the Association has failed to present any evidence that the Foundation's statements to the members and security guards were unreasonable, unlawful, or negligently or intentionally tortious. The record contains no evidence to support the assertion that the Foundation acted unlawfully in its communications with the Association's members and security service.

Accordingly, we conclude, as a matter of law, that the record fails to support a prima facie claim of intentional or negligent interference with contractual or economic relationships.

DISPOSITION

We reverse the order denying the motion to strike under section 425.16, and direct the trial court on remand to enter a new order granting the motion. The trial court is to consider and rule upon defendants' request, if any, for attorney fees and costs under section 425.16, subdivision (c). In addition, appellant Foundation is awarded reasonable appellate attorney fees and costs as shall be determined by the trial court.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J.

VOGEL (Miriam A.), J.